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DIVISION II

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STATE OF WASHINGTON

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COURT OF APPEALS CAUSE No. 55753-3-II

CLARK COUNTY CAUSE NO. 15-2-03226-1

**IN THE COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON**

LINDA AMES, AN INDIVIDUAL

APPELLANT

v.

**HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE
FOR WELLS FARGO ASSET SECURITIES CORPORATION,
MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2006-AR16**

RESPONDENT

OPENING BRIEF OF APPELLANT

**LINDA AMES
APPELLANT
11920 NW 35TH AVENUE
VANCOUVER WA 98685
TEL: (360) 931-1797
E-mail: lindalouames@comcast.net
Appellant Pro Se**

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I. INTRODUCTION

After an entire appeal seeking leave to pursue her claims against the entities responsible for the theft of her home, Linda Ames comes again to this court with compelling evidence of wrongdoing such that entitles her to a complete reversal of the Order of the Superior Court from a series of orders, denying her motion for reconsideration of the orders denying entry of default, and default judgment, denying multiple motions to compel discovery, appealing the order granting summary judgment in favor of HSBC acting as Trustee for Wells Fargo and appealing the Court's order denying Plaintiff's motion to amend the complaint to include Wells Fargo.

At the time the summary judgment was entered depriving Ames of her rights to recover for the theft of her home, so much was unknown about the role Wells Fargo was playing in victimizing homeowners as the servicer for a non-existent trust which are not licensed to do business in this state, and are doing so unlawfully. Ames was instructed to stop making payments by Wells. Since the entry of the summary judgment, whereas the court originally did not believe Wells was liable for any wrongdoing and denied the motion for leave to amend, much has happened to open the eyes of this court. Multiple

class action suits were filed and the courts now are deluged with cases where that Wells wrongfully instructed people to go into default for the nefarious purpose of depriving them of their home and equity. Ames was one of those victims. Her home was often inspected, her bank account monitored, and after multiple times being told to resubmit loan modification requests and the same documents over and over, when her bank balance dropped to a point she could not pay the full amount of the arrears they induced her to build, they denied her modification request and defaulted her. They put the property up for auction, cancelled the auction and instead, transferred title in California. There is no admissible evidence on the record that a sale ever occurred on the courthouse steps, and the paperwork shows the title was transferred in California.

There were other defects in the sales process. For example, the public records prove that the Trustee was not lawfully appointed by Wells Fargo, because Wells Fargo had already assigned away their right title and interest at the time they claim they appointed the Trustee. Defendant Appellee admitted that Leisa Jefferson was not authorized to execute the documents in favor of Wells because she was an employee of Wells and falsely held herself out to be the authorized

signature of the assignor, but it was a defunct entity at the time and not licensed to do business in the state. The sale was cancelled, and the sale did not transpire on the Courthouse steps. In fact, the Trustee was not even licensed to do business in the State at the time of the purported sale to the Defendant. Because the Defendant / Appellee, trust is not a registered trust and not licensed to do business in this state, it (CP – 2) had no standing to foreclose on the Plaintiff or seek any affirmative relief. It is barred from collecting any money from the Plaintiff / Appellant. That, in and of itself, was grounds to deny the opposition and hold them to answer. RCW 23.95.505¹.

¹ RCW 23.95.505

Registration to do business in this state. (Effective January 1, 2016.)

(1) A foreign entity may not do business in this state until it registers with the secretary of state under this chapter.

(2) A foreign entity doing business in this state may not maintain an action or proceeding in this state unless it is registered to do business in this state and has paid to this state all fees and penalties for the years, or parts thereof, during which it did business in this state without having registered.

(3) The successor to a foreign entity that transacted business in this state without a certificate of registration and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign entity, or its successor, obtains a certificate of registration.

(4) A court may stay a proceeding commenced by a foreign entity, its successor, or assignee until it determines whether the foreign entity, or its successor, requires a certificate of registration. If it so determines, the court may further stay the proceeding until the foreign entity, or its successor, obtains the certificate of registration.

Furthermore, the Defendant Trust was not licensed to do business in this State and the trust was closed at the time it claims to have acquired the interest in the Plaintiff's home. The identity of the Lender has and was at all relevant times concealed from the Plaintiff until the foreclosure.

Nothing that transpired against the Plaintiff was legal, and Defendant, knowing that, failed and refused to respond to the propounded discovery, all with the hopes of preventing the Court from seeing the depth of their deception. Plaintiff had to bring Six Motions

...

(8) RCW 23.95.500 (1) and (2) applies even if a foreign entity fails to register under this Article 5.

All businesses operating in the State of Washington must obtain a Washington State Master Business License. The Master Business License registers the business for State tax purposes and registers the trade name. You need to file a Master Business Application when you first start your business, or when you change or update your business. The Master Business Application can be found on the Washington State Department of Revenue website, Business.wa.gov/BLS.

5.35.020 Business license required.

Unless exempted in this chapter pursuant to MVMC 5.35.030, no person shall locate or engage in any business located physically within the City without first having obtained from the City a valid and current business license to carry on that business. This license shall be in addition to any other licenses or permits required by any other section of this code or by State or federal law. Business licenses are nontransferable and a separate business license shall be obtained for each location at which a business operates within the City. Licenses shall be prominently displayed at each business location so as to be viewable by the public. (Ord. O-12-503 § 1).

to Compel because the discovery sought directly relates to the issues listed herein, and the Plaintiff had not received any responses. In fact, the Plaintiff obtained an order granting her request requiring them to respond by February 28th, 2017 and Plaintiff was still waiting by the time the motion for Summary Judgment was filed. There are already six motions to compel seeking this information. Defendant was evasive, non-responsive and protecting the individuals who executed and recorded false documents in the official records. Declaration of Linda Ames, Paragraph 74.

It violates Ames Due Process and equal protection rights dictate that Ames should be entitled to proceed where other victims of Wells servicing fraud, including telling her to stop making payments; unlawful appointments of substitute trustees; and illegal "back door" transfers of title rather than public auction are able to recover their damages.

II. ASSIGNMENTS OF ERROR AND ISSUES

1. THE COURT ERRED IN REFUSING TO VACATE THE DISMISSAL AND PERMIT HER TO PROCEED AGAINST WELLS WHERE OTHERS WERE NOT ONLY ENTITLED TO RECOVER BUT ALSO RECEIVED EXEMPLARY DAMAGES FOR WANTON AND WILLFUL MISCONDUCT.

2. AMES WAS VICITIMIZED AND THE COURT CONSTRUED THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE MOVING PARTY RATHER THAN AMES.


3. THE GREAT WEIGHT OF EVIDENCE ESTABLISHES THAT WELLS HAS COMMITTED ATROCITIES AGAINST AMES FOR WHICH RELIEF SHOULD HAVE BEEN GRANTED, AND INSTEAD HER RIGHT TO RECOVERY HAS BEEN WRONGFULLY BARRED BY THE LOWER COURT ONCE ALL THE EVIDENCE HAS COME TO LIGHT.

4. THERE IS NO TRUST, HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR WELLS FARGO ASSET SECURITIES CORPORATION, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR16 SWOR TO THE STATE OF NEW JERSEY THAT IT WAS NOT AN INDIVIDUAL, ESTATE OR A TRUST, AND AS A RESULT, IT HAD NO CAPACITY OR STANDING TO FORECLOSE, WAS NOT A REGISTERED TRUST IN THIS OR ANY STATE, AND THE JUDGMENT IN ITS FAVOR WAS IN ERROR.

III. STATEMENT OF THE CASE

LINDA AMES sued the Defendants, HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR WELLS FARGO ASSET SECURITIES CORPORATION, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR16 and after receiving limited discovery responses from that defendant, and before the Court granted the Motion for Summary Judgment in favor of the Defendant, the Plaintiff filed a motion for an order permitting her to

amend the complaint to include WELLS FARGO BANK, NA as a separate defendant. That motion was denied. The Plaintiff filed seven motions to compel after the Defendant refused to answer the Request for Admissions without objection; refused to respond to the Interrogatories without objection and have them signed under oath; and refused to identify which documents it did produce applied to which request. It is now evident that the reason the appellee refused to respond to the discovery was because they could not respond. They could not answer the questions because they did not exist. HSBC swore to the State of New Jersey that HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR WELLS FARGO ASSET SECURITIES CORPORATION, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR16 was not an individual, estate or a trust.

5.  Seller is not an individual, estate or trust and as such not required to make an estimated payment pursuant to N.J.S.A.54A:1-1 et seq.

It had no legal capacity to foreclose; could not have been the holder and owner of the subject note and mortgage. Wells was sued in multiple lawsuits for precisely the same misconduct as alleged herein (told borrowers to stop making payments, and improper appointment of the substitute trustees without actual authority to do so).

“The unexplained failure to furnish complete and meaningful answers to these material interrogatories in the face of the court's order impels a conclusion that the refusal was willful. In this connection we note that CR 37(a)(3) allows the court to treat an evasive or incomplete answer as a "failure to answer." “In our opinion, any violation of an explicit court order without reasonable excuse or justification must be deemed a willful act.” *Rhinehart v. Seattle Times*, 754 P. 2d 1243 - Wash: Court of Appeals, 1st Div. 1988.” It is now abundantly clear that Wells as servicer knew what it was doing; knew what it was doing was wrong; and paid exemplary and compensatory damages to others for the precise same misconduct. There was no trust and no way to respond to the discovery without hearsay fabricated responses that could not be verified.

RIGHT TO APPEAL

The order denying a motion for reconsideration and the order dismissing the case is an appealable order under RAP 2.2(a)(9) and (10) inasmuch as it represents an appeal of the Order on Motion for New Trial or Amendment of Judgment. An order granting or denying a motion for new trial or amendment of judgment. (10) Order on

Motion for Vacation of Judgment. An order granting or denying a motion to vacate a judgment.

STANDARD OF REVIEW

STANDARD ON SUMMARY JUDGMENT

A defendant who moves for summary judgment bears the initial burden of showing the absence of a genuine issue of material fact. *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). Once that burden is met, the burden shifts to the party with the burden of proof at trial to "make a showing sufficient to establish the existence of an element essential to that party's case." *Young*, 112 Wn.2d at 225 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). In demonstrating the existence of material facts, the nonmoving party may not rely on "mere allegations . . . , but a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." CR 56(e). We draw all reasonable inferences from the facts in the light most favorable to the nonmoving party. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004).

Leave to amend a complaint is to be freely given when justice requires. CR 15(a). *Doyle v. Planned Parenthood*, 639 P. 2d 240 - Wash: Court of Appeals, 1st Div. 1982 Rule 15(a) specifically provides that leave to amend "shall be freely given when justice so requires." CR 15(a). These rules serve to facilitate proper decisions on the merits, to provide parties with adequate notice of the basis for claims and defenses asserted against them, and to allow amendment of the pleadings except where amendment would result in prejudice to the opposing party. *Caruso v. Local Union No. 690*, 100 Wash.2d 343, 349, 670 P.2d 240 (1983); *Herron*, 108 Wash.2d at 165, 736 P.2d 249. The decision to grant leave to amend the pleadings is within the discretion of the trial court. *Sprague v. Sumitomo Forestry Co.*, 104 Wash.2d 751, 763, 709 P.2d 1200 (1985); *Lincoln v. Transamerica Inv. Corp.*, 89 Wash.2d 571, 577, 573 P.2d 1316 (1978). Therefore, when reviewing the court's decision to grant or deny leave to amend, we apply a manifest abuse of discretion test. *Caruso*, 100 Wash.2d at 351, 670 P.2d 240. The trial court's decision "will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable

grounds, or for untenable reasons." *State ex rel. Carroll v. Junker*, 79 Wash.2d 12, 26, 482 P.2d 775 (1971).

The touchstone for the denial of a motion to amend is the prejudice such an amendment would cause to the nonmoving party. *Caruso*, 100 Wash.2d at 350, 670 P.2d 240. Factors which may be considered in determining whether permitting amendment would cause prejudice include undue delay, unfair surprise, and jury confusion. *Herron*, 108 Wash.2d at 165-66, 736 P.2d 249. *Wilson v. Horsley*, 974 P. 2d 316 - Wash: Supreme Court 1999

Here, the law firm of Harwood Feffer LLP announced that it has filed a class action lawsuit against Wells Fargo Bank NA and its loan servicing division, America's Servicing Company (ASC), for fraudulent and deceptive practices related to loan modifications. The suit, filed in the United States District Court for the Northern District of California, *Forster, et al. v. Wells Fargo, et al.*, alleges that ASC improperly and unlawfully induced borrowers to default on their mortgages by informing borrowers that loan modifications would not be considered for those individuals who were current on their payments. By making loan default a pre-requisite for modification, without regard to whether a borrower otherwise qualified for a

modification due to financial hardship, or ASC caused borrowers to unnecessarily suffer ruined credit and subjected them to significant fees, penalties and interest. As a loan servicer, ASC generates a significant portion of its revenue from fees, penalties and interest collected on the non-performing loans it services. Harwood Feffer's clients believe that it is in ASC's financial interest to avoid, delay and deny loan modifications and to pursue foreclosures because doing so will lead to increased revenue. See www.hfesq.com. This exact misconduct transpired against Ames.

On October 18, 2019, the U.S. District Court for the Eastern District of Washington decided that plaintiffs who lost their homes after Wells Fargo rejected their modification applications due to an error in the servicer's software had properly alleged a claim under the Washington Consumer Protection Act. Ames lost her home after Wells Fargo rejected her modification application. Because of the outcome in this case, she is prevented from pursuing her rights under the class action.

On Friday, August 3, 2018, Wells Fargo admitted that it failed to give modifications to about 625 mortgage-loan borrowers—even though they qualified for relief—due to a computer glitch. The bank

eventually carried out foreclosures on 400 of those homeowners. In November 2018, Wells Fargo increased these numbers to 870 and 545, respectively. Its customers were wrongfully denied modifications resulting in Wells Fargo paying out more than 69 million dollars under Washington Consumer Protection Act.

Wells Fargo Improperly Denied Modifications. An internal review at Wells Fargo revealed that an underwriting tool the company used to process loan modifications consistently made a calculation error that affected specific accounts between April 13, 2010, and October 20, 2015. Wells Fargo then revised its previous disclosure, stating that the errors continued until April 2018.

What was the error? The modification tool automatically miscalculated attorneys' fees when evaluating borrowers for a potential loan modification. As a result of the miscalculation, some borrowers were deemed ineligible for a HAMP modification or a modification under a government-sponsored enterprise program, like one from Fannie Mae or Freddie Mac.

How many people were affected? Initially, Wells Fargo said that around 600 customers were incorrectly denied a loan modification or were not offered a modification in cases where they would have

otherwise qualified, and that in about 400 of these cases, the bank eventually foreclosed. In November 2018, Wells Fargo increased these numbers to 870 and 545. It is likely Ames could prove she belongs in this class of victims, but for this ruling.

Wells Fargo home loan customers who lost their homes may be able to benefit from an \$18.5 million settlement that, if approved by the court, will end a class action lawsuit alleging bank errors led to mortgage holders losing their homes to foreclosure. The Wells Fargo home loan class action lawsuit was filed in 2018 by a woman who says that her application for a mortgage modification was wrongly denied by the bank and, as a result, her home was sold in foreclosure.

On July 24, 2020 in Roanoke, Virginia, a second nationwide class-action lawsuit has been filed against Wells Fargo for fraudulently putting people into forbearance status on their home mortgage payments without their knowledge, consent, or request under the guise of COVID-related mortgage relief. The lawsuit seeks remedies for thousands of homeowners who are suffering damages as a result of Wells Fargo's unauthorized practices. The suit was filed in the U.S. District Court for the Western District of Virginia, Harrisonburg Division, according to lead attorney Thad Bartholow of Kellett &

Bartholow PLLC (Dallas, Texas). Kellett & Bartholow, along with co-counsel Giles & Lambert, PC (Roanoke, VA), and Abelardo Limon (Brownsville, Texas) filed the lawsuit on July 23, 2020. The suit is titled *Forsburg v. Wells Fargo & Co., et al.*, Case No. 5:20-cv-00046.

There are many more instances, but the court now understands the simple fact that Ames was victimized and out of the millions of homeowners victimized by Wells, Ames right to recover has been deprived by this Court. Apparently, she is barred from recovery but the rest of the citizens of the USA who are victimized are still entitled to relief. It is unjust, inequitable, and violates due process and equal protection rights.

IV. SUMMARY OF FACTS

Ames was victimized by the Defendant / Appellee. Ames was told to stop making her payments so she could qualify for a loan modification. Appellant regularly inspected the home, saw the wonderful improvements she made to the property, how she enhanced the value, and then took the home from her. There was no sale. There was no auction. It was cancelled. Wells dragged her through the ringer, making Ames resubmit the same loan modification paperwork over and over again, each time telling her NOT to make any payments

until the loan modification would be offered. They monitored her bank account, and when her balance was insufficient to bring the arrears they created current, they pounced. They foreclosed, pretending to have an auction, but transferred the property in California after cancelling the foreclosure sale. They improperly appointed the substitute trustee after they no longer had an interest in the subject note and mortgage and did all this in the name of a non-existent trust. Ames found that HSBC swore to the State of New Jersey that HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR WELLS FARGO ASSET SECURITIES CORPORATION, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR16 was not an individual, estate or a trust. The entire foreclosure was illegal and part of a criminal scheme and artifice to defraud, evading even the payment of income taxes to the State of New Jersey.

ARGUMENT

- 1. THE COURT ERRED IN REFUSING TO VACATE THE DISMISSAL AND PERMIT HER TO PROCEED AGAINST WELLS WHERE OTHERS WERE NOT ONLY ENTITLED TO RECOVER BUT ALSO RECEIVED EXEMPLARY DAMAGES FOR WANTON AND WILLFUL MISCONDUCT.**

As evidenced above, multiple class action lawsuits were filed and successfully resolved against Wells for the precise harm suffered

by Ames. Due Process and Equal protection under the State and US Constitution dictate Ames should not be deprived of her right to recover for that misconduct². Instead, the court denied her relief on the

² Wells Fargo had problems of its own. In November 2009 it had to agree to buy back \$1.4 billion in auction-rate securities to settle allegations by the California attorney general of misleading investors.

In May 2011 it was fined \$1 million by FINRA for failing to send disclosure documents to customers. That same month, it agreed to pay up to \$16 million to settle charges of violating the Americans with Disabilities Act.

In July 2011 Wells Fargo agreed to pay \$125 million to settle a lawsuit in which a group of pension funds accused it of misrepresenting the quality of pools of mortgage-related securities. That same month, the Federal Reserve announced an \$85 million civil penalty against Wells Fargo for steering customers with good qualifications into costly subprime mortgage loans during the housing boom.

In November 2011 Wells Fargo agreed to pay at least \$37 million to settle a lawsuit accusing it of municipal bond bid rigging. The following month, FINRA fined it \$2 million for improper sales of reverse convertible securities and later another \$2.1 million for failing to properly supervise the sale of exchange-traded funds. Wells Fargo was one of five large mortgage servicers that in February 2012 consented to a \$25 billion settlement with the federal government and state attorneys general to resolve allegations of loan servicing and foreclosure abuses. The New York Attorney General later sued Wells Fargo for breaching the terms of that settlement.

In July 2012 the U.S. Justice Department announced that Wells Fargo would pay \$175 million to settle charges that it engaged in a pattern of discrimination against African-American and Hispanic borrowers in its mortgage lending during the period from 2004 to 2009. In August 2012 Wells Fargo agreed to pay \$6.5 million to settle SEC charges that it failed to fully research the risks associated with mortgage-backed securities before selling them to customers such as municipalities and non-profit organizations.

In January 2013 Wells Fargo was one of ten major lenders that agreed to pay a total of \$8.5 billion to resolve claims of foreclosure abuses. A few months later, Wells Fargo settled a lawsuit alleging that it neglected the maintenance and marketing of foreclosed homes in black and Latino areas by agreeing to spend at least \$42 million to promote home ownership and neighborhood stabilization.

In October 2013 Freddie Mac announced that Wells Fargo would pay \$869 million to repurchase home loans the bank had sold to the mortgage agency that did not conform to the latter's guidelines.

In December 2014 FINRA fined Wells Fargo Securities \$4 million as part of a case against ten investment banks for allowing their stock analysts to solicit business and offer favorable research coverage in connection with a planned initial public offering of Toys R Us in 2010.

In March 2016 the SEC charged Wells Fargo with defrauding investors in a municipal bond offering to finance 38 Studios, a Rhode Island startup video game company founded by former Boston Red Sox pitcher Curt Schilling that eventually went bankrupt, leaving the state on the hook for \$75 million in debt.

In April 2016 the Justice Department announced that Wells Fargo would pay \$1.2 billion to resolve allegations that the bank certified to the Department of Housing and Urban Development that certain residential home mortgage loans were eligible for Federal Housing Administration insurance when they were not, resulting in the government having to pay FHA insurance claims when some of those loans defaulted.

In August 2016 the Consumer Financial Protection Bureau announced that Wells Fargo would pay a penalty of \$3.6 million plus \$410,000 in restitution to customers to resolve allegations that it engaged in illegal student loan servicing practices.

In September 2016 the CFPB imposed a fine of \$100 million against Wells Fargo in connection with the revelation that for years bank employees were creating more than two million new accounts not requested by customers, in order to generate illicit fees. The company also paid \$35 million to the Office of the Comptroller of the Currency and \$50 million to the City and County of Los Angeles.

The case generated a major scandal, and the bank's CEO John Stumpf was denounced in a Senate hearing and then one in the House. He was forced to return about \$41 million in compensation, but this did not diminish the controversy. The California Treasurer announced that the state would suspend many of its business dealings with the bank; Chicago later did the same. Stumpf subsequently gave in to the pressure and resigned. The bank later clawed back an additional \$75 million from Stumpf and another former executive.

In a separate case, Wells Fargo agreed to pay \$50 million to settle a class action lawsuit alleging that the bank overcharged hundreds of thousands of homeowners for appraisals ordered after they defaulted on mortgage loans.

In April 2017 Wells Fargo was ordered to provide \$5.4 million in back pay, damages and legal fees to a bank manager who had been terminated in 2010 after reporting suspected fraudulent behavior to superiors and a bank ethics hotline.

In July 2017 it was revealed that more than 800,000 customers who had taken out car loans with Wells Fargo were charged for auto insurance they did not need.

Several weeks later, the bank disclosed that the number of bogus accounts that had been created was actually 3.5 million, a nearly 70 percent increase over the bank's initial estimate.

In February 2018 the Federal Reserve took the unprecedented step of barring Wells Fargo from growing any larger until it cleaned up its business practices. The agency also announced that the bank had been pressured to replace four members of its board of directors.

In April 2018 the Office of the Comptroller of the Currency and the Consumer Financial Protection Bureau fined Wells Fargo a total of \$1 billion for selling unnecessary products to customers and other improper practices.

In May 2018 Wells Fargo agreed to pay \$480 million to settle a class action lawsuit filed by shareholders accusing the company of making false statements about its business practices.

In August 2018 Wells Fargo agreed to pay \$2.09 billion to resolve a Justice Department case involving the misrepresentation of the quality of loans used in residential mortgage-backed securities the bank issued in the period leading up to the financial crisis.

In December 2018 Wells Fargo agreed to pay \$575 million to settle claims brought by all 50 states and the District of Columbia in connection with a variety of questionable practices.

In December 2019 Wells agreed to provide \$10 million for housing programs in Philadelphia to resolve litigation alleging that it violated the Fair Housing Act in the mortgage loans it provided to minority borrowers in the city.

In February 2020 Wells Fargo agreed to pay \$3 billion to resolve federal civil and criminal investigations into the fake-account scandal. The settlement included a deferred prosecution agreement.

Also in February, Wells paid \$35 million to the SEC to settle a case involving a failure to properly supervise investment advisors.

mistaken belief she could proceed with one of those other class actions or join another class action. Once she attempted to proceed with an action against Wells here, she “opted out” of the other class actions and would not be entitled to recover. What is worse, is that the court at the time the summary judgment was granted may have believed that Wells committed no wrongdoing, it is now abundantly clear that Wells not only committed those wrongful acts, but it was wanton, willful, and malicious, entitling her to exemplary damages under the amended complaint she was deprived of proceeding within this action. The right to participate, or to opt-out, is an individual one and should not be made by the class representative or the class counsel. See *Newberg and Conte, Newberg on Class Actions*, § 16.16 at 90 (3d ed. 1992) (“The decision to exercise the right of exclusion in a Rule 23(b)(3) action is an individual decision of each class member and may not be usurped by the class representative or class counsel.”) *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-77, 94 S.Ct. 2140, 40 L.Ed.2d 732 (1974). Additionally, to allow representatives in variously asserted class actions to opt a class out without the permission of individual

In June 2020 Wells agreed to pay \$20 million to the State of Maryland in settlement of allegations it misled investors over the safety of its residential mortgage-backed securities.

class members "would lead to chaos in the management of class actions." *Berry Petroleum Co. v. Adams & Peck*, 518 F.2d 402, 412 (2d Cir.1975).

Here, Ames was not given the opportunity to join a class, but instead, pursuing her own cause of action against Wells caused her to opt out of the settled class action cases. Ames has taken affirmative action against Wells and thus has opted out. She cannot proceed with a class action due to claim preclusion. Claim preclusion, traditionally known as *res judicata*, prohibits a party from bringing a claim already litigated or a claim that could have been litigated in a prior action. *Pederson v. Potter*, 103 Wash.App. 62, 67, 11 P.3d 833 (2000). This doctrine prevents repetitive litigation of the same matters, ensuring integrity and finality in the legal system. *Pederson*, 103 Wash.App. at 71, 11 P.3d 833 (quoting 14 Lewis H. Orland and Karl B. Tegland, *Washington Practice* § 359 (1996)). A prior judgment has preclusive effect when the party moving for summary judgment in the successive proceeding proves that the two actions are identical in four respects: (1) persons and parties; (2) cause of action; (3) subject matter; and (4) the quality of the persons for or against whom the claim is made. *Kuhlman*, 78 Wash.App. at 120, 897 P.2d 365; Philip A. Trautman,

Claim and Issue Preclusion in Civil Litigation in Washington, 60 Wash. L.Rev. 805, 812 (1985). If Ames cannot recover here, she cannot recover in the class action.

2. AMES WAS VICITIMIZED AND THE COURT CONSTRUED THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE MOVING PARTY RATHER THAN AMES.

The court sided with the HSBC and construed all evidence in the light most favorable to HSBC. There was every evidentiary indication that Wells Fargo and HSBC conspired together to steal the Appellant Ames home. The records showed that the transfer occurred in California, not on the courthouse steps in Washington. The recorded substitution of Trustee occurred after the assignment of mortgage was already in place. How can Wells substitute the trustee after no longer having an interest in the subject property? With the benefit of hindsight, this Court of Appeals can now see that Wells is NOT innocent and committed the wrongdoings alleged in the amended complaint. This court should permit this injustice to stop in its track and permit her to proceed with the amended complaint against HSBC and Wells as its servicer.

HSBC swore that there is no trust, estate or individual. Wells has settled for millions in wrongful foreclosure claims and servicing

disputes. Ames is being deprived of her rights to proceed. Ames beseeches this court for a simple chance to prove her harm. According to the SEC records, the Ghost Trust was closed on September 22nd, 2006 and the assignment of mortgage was December 6th, 2011 pursuant to the recorded assignment, Document 4813726, recorded in the official records of Clark County, Washington, Exhibit 3 attached to the complaint. There is no trust. There was no trust when it foreclosed. There was no lender. There was no holder. There was no entity which owned the subject note and mortgage and no capacity to foreclose or sue existed by the ghost trust.

On December 8th, 2011, after Defendant HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR WELLS FARGO ASSET SECURITIES CORPORATION, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR16 was no longer licensed to do business in this state, nevertheless recorded an assignment of deed of trust from Wells Fargo Home Mortgage to HSBC Bank USA, NA; and what's more, is that the true holder and owner of the note and mortgage is not HSBC BANK USA, NA but claimed to be a trust for which HSBC Bank USA, NA is a Trustee.

Neither HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR WELLS FARGO ASSET SECURITIES CORPORATION, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR16 nor HSBC are registered to do business in this state, not licensed to do business in this state, and did business here unlawfully. On December 8th, 2011, there was an ASSIGNMENT OF DEED OF TRUST RECORDED BY WELLS FARGO HOME MORTGAGE, listing SIERRA PACIFIC MORTGAGE CO INC as the Grantor and HSBC BANK USA NA, as the Trustee, Document 4813726, Exhibit 3. Said Corporate assignment was executed by Leisa Jefferson, purporting to be authorized by MERS to sign for Sierra Pacific Mortgage Company. That information is FALSE. Leisa Jefferson was hired as a Loan Servicing Specialist at Wells Fargo Home Mortgage in Saint Paul, Minnesota. In my discovery requests, I demanded proof and the Defendant has not provided any proof of any AUTHORITY, ACTUAL OR IMPLIED and NO AUTHORITY was ever recorded in the official records, to execute documents on behalf of MERS. See Declaration of Linda Ames, Paragraph 13. Wells Fargo assigned the interest to itself, without authority to do so, and without being a bona

fide purchaser for value. The Plaintiff demanded proof of payment and the Defendant failed to provide proof of the same in the discovery. See Demand for Production of Documents, Requests 27, 34, and 36; Interrogatories, 9, 11, 12, 18, 27, 34, and 36. The assignment was fraudulent, and the recording of the assignment constitutes a fraudulent recording of a document in the official records of the County, a felony. RCW 40.16.030.

On March 26, 2012, **AFTER WELLS FARGO had already recorded the assignment of Deed of Trust, as set forth above, they then recorded an appointment of Trustee to Quality Loan Service Corp. of Washington, Document 4841188; and as a result of the fact that WELLS FARGO no longer had any right to do so, the appointment of Trustee was void and unlawful.** If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. RCW 61.24.010: Trustee, qualifications—Successor trustee. The Successor Trustee could not be appointed because Wells had **ALREADY ASSIGNED** their rights away. The appointment of the successor was therefore **VOID**. Nothing provided

by the Defendant in its motion contradicts this fact. However, "only the actual holder of the promissory note or other instrument evidencing the obligation may be a beneficiary with the power to appoint a *trustee* to proceed with a nonjudicial foreclosure on real property." *Bain v. Metro. Mortg. Grp, Inc.*, 175 Wn.2d 83, 89, 285 P.3d 34 (2012). Similarly, a loan "servicer" is not necessarily the owner, **but the servicer must be a holder of the Note in order to enforce the Note.** *Brown*, 184 Wn.2d at 523. "Only a lawful beneficiary has the power to appoint a *successor trustee*, and only a lawfully appointed *successor trustee* has the authority to issue a notice of trustee's sale." *Walker v. Quality Loan Serv. Corp.*, 176 Wn. App. 294, 306, 308 P.3d 716 (2013) (footnotes omitted). On December 5th, 2012, after having no lawful right to do so, QUALITY LOAN SERVICE CORP OF WASHINGTON recorded a NOTICE OF TRUSTEE SALE, Document 4959410; said document being a slander on the title of the Plaintiff, and further constitutes the filing of a false document in the official records of the County, a felony in this State.

3. THE GREAT WEIGHT OF EVIDENCE ESTABLISHES THAT WELLS HAS COMMITTED ATROCITIES AGAINST AMES FOR WHICH RELIEF SHOULD HAVE BEEN GRANTED, AND INSTEAD HER RIGHT TO RECOVERY HAS BEEN WRONGFULLY BARRED BY THE LOWER COURT ONCE ALL THE EVIDENCE HAS COME TO LIGHT

The loan was fraudulent from the outset because on or about 2009, Plaintiff negotiated a loan modification, paid the timely payments for the loan modification, but after one year of timely payments, the Defendants purported predecessor in interest no longer honored the loan modification. See Declaration of Linda Ames Paragraph 20. Thereafter, in September 2010, Defendants purported predecessor in interest (Wells Fargo) instructed the Defendant to stop making her payments so she would be in arrears and qualify for a loan modification, then refused to grant a new modification on the basis that Plaintiff was in arrears in her payments. Declaration of Linda Ames Paragraph 21.

That Wells Fargo conspired with Defendant to commit a fraudulent sale after providing the Plaintiff with notice of cancellation of the same, depriving her of her rights under the loan agreement, and her rights of due process and equal protection; and by commission of a felony in recording false documents in the public records, as prohibited by Washington Statutes. Declaration of Linda Ames Paragraph 22. Said predecessor, Wells Fargo, was indicted and ordered to share in the 25 billion dollar settlement with the 50 attorney generals and the US Attorney General along with the Office of the Controller

of the Currency for that precise conduct, and was ordered as part of the consent decree not to commit such conduct and to compensate the Plaintiff and others for committing this heinous act, which caused irreparable harm to the creditworthiness of the Plaintiff and further caused severe and irreparable harm to the value of the Plaintiffs property, and further causing the unlawful theft of the Plaintiffs homestead home. Declaration of Linda Ames Paragraph 23. That in direct violation of the consent decree, predecessor in interest Wells Fargo did record false documents in the public record, including the appointment of a trustee when Wells Fargo no longer had any interest in the subject property nor any lawful right to do so. Declaration of Linda Ames Paragraph 24.

The court now knows that the sale was void, having been obtained under questionable circumstances at best by a non-existent trust who of fraud by a That Plaintiff further seeks an order declaring that the sale to the Defendant was void ab initio and done in direct violation of state law and as a result, constitutes theft of Plaintiff's property and further multiple felonies, including theft, conversion and recording false documents in the official records. Declaration of Linda Ames Paragraph 25.

That said sale was void ab initio and there were irregularities in the execution of the documents; the fact that the sale was cancelled prior to the time it proceeded; and the buyer was the trust who is not registered to do business here, and is doing business here unlawfully; and if that were not enough, the trustee was also not licensed to do business here, and is doing business here unlawfully. Declaration of Linda Ames Paragraph 41.

After the entry of the orders sought to be vacated, The Notice of Appeal was filed on March 8th, 2018. However, on August 1, 2018, a settlement was entered into between the United States, acting through the United States Department of Justice ("Department of Justice"), and Wells Fargo Bank, N.A. which included conduct related to the subject Defendant Trust. "The United States contends that it has certain civil claims against Wells Fargo specified in Paragraph 3 of the Terms and Conditions section below, including those under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. § 1833a. The United States contends that these civil claims are predicated on Wells Fargo's violations of 18 U.S.C. § 1341 (mail fraud), 18 U.S.C. § 1343 (wire fraud), 18 U.S.C. § 1014 (false statements to financial institutions), and 18 U.S.C. § 1344

(financial institutions fraud). Ibid. Pg. 2. "3. Releases by the United States. Subject to the exceptions in Paragraph 4 ("Excluded Claims") and conditioned upon Wells Fargo's full payment of the Settlement Amount, the United States fully and finally releases Wells Fargo, each of its current and former subsidiaries and affiliated entities, and each of their respective successors and assigns (collectively, the "Released Entities"), from any civil claim the United States has against the Released Entities for the Covered Conduct arising under FIRREA, 12 U.S.C. § 1833a; the False Claims Act, 31 U.S.C. §§ 3729, et seq.; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801, et seq.; the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, et seq.; the Injunctions Against Fraud Act, 18 U.S.C. § 1345; common law theories of negligence, gross negligence, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud, and aiding and abetting any of the foregoing; or that the Civil Division of the Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. § 0.45(d). 4. Excluded Claims. Notwithstanding the releases in Paragraph 3 of this Agreement, or any other term(s) of this Agreement, the following claims are specifically

reserved and not released by this Agreement: a. Any conduct other than the Covered Conduct; b. Any criminal liability; c. Any liability of any individual; ..." *Ibid.* FN 1. As a result of this settlement which occurred after the complaint was filed the Plaintiff has new and additional grounds for her complaint.

The government got the Defendant to settle on the grounds that the Defendant had committed illegal acts which are identical to those complained of by the Plaintiff. That the Defendant had unclean hands when it foreclosed against the Plaintiff, and since non-judicial foreclosure is an equitable action, the unclean hands was a bar to any recovery. What is worse, is that multiple civil actions were excluded in the settlement itself so that they may be permitted to proceed, whereas the Plaintiff is being deprived of her causes of action.

Additionally, since the filing of the action, a class action lawsuit was just discovered listing this trust. UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION, IN RE WELLS FARGO MORTGAGEBACKED CERTIFICATES LITIGATION, Civil Action No. 09-cv-01376-SI, CONSOLIDATED CLASS ACTION, AMENDED CONSOLIDATED CLASS ACTION COMPLAINT

FOR VIOLATIONS OF §§ 11, 12(a)(2) AND 15 OF THE SECURITIES ACT OF 1933. See Ibid, ¶ 43. That class action included relief sought by the subject investors in the subject trust. The settlement was distributed under that class action, which means that at the time the Defendant foreclosed on the Plaintiff, they had already recovered their money for the subject mortgage, or at a minimum, some portion of it, which was never credited to the Plaintiff.

That not only did the Defendant have unclean hands, but the **Lender was already paid for some or all the subject mortgage when it claims it sold the Plaintiff's property at an auction that never occurred.**

The settlement indicates that the Public Employees' Retirement System of Mississippi was the investor / "Lender" in this action and recovered their investment before taking the Plaintiff's property. At a minimum, they have been unjustly enriched at the Plaintiff's expense. "The Settlement Fund consists of \$125 million plus interest earned. Based on the total initial face dollar value of the Certificates as stated in the prospectus supplements (without subtracting the principal pay downs received on the Certificates), and assuming all purchasers of the initially offered certificates elect to participate, the estimated average

distribution is \$2.70 per \$1,000 in initial certificate value of the Wells Fargo Certificates. Class Members may recover more or less than this amount depending on, among other factors, when their certificates were purchased or sold, the amount of principal that has been repaid, the value of the certificates on the applicable Date of First Suit as indicated in the attached Table A, the number of Class Members who timely file Claims, and the Plan of Allocation, as more fully described below in this Notice. In addition, the actual recovery of Class Members may be further reduced by the payment of fees and costs from the Settlement Fund. This settlement occurred after the Defendant claimed to have acquired the mortgage into the closed trust.

According to the SEC records, the Ghost Trust was closed on September 22nd, 2006, and the assignment of mortgage was December 6th, 2011 pursuant to the recorded assignment, Document 4813726, recorded in the official records of Clark County, Washington, Exhibit 3 attached to the complaint. There is no trust. There was no trust when it foreclosed. There was no lender. There was no holder. There was no entity which owned the subject note and mortgage and no capacity to foreclose or sue existed by the ghost trust.

There were other defects in the sales process. DEFENDANT's purported predecessor in interest previously committed wrongful acts, in that they previously attempted to foreclose on the Plaintiff, LINDA AMES in a non-judicial foreclosure proceeding over a Mortgage) see recorded mortgage (Exhibit "2") on the property Document 4148891, recorded on April 6th, 2006, in the official records of this County. (CP – 7-8). On December 8th, 2011, there was an ASSIGNMENT OF DEED OF TRUST RECORDED BY WELLS FARGO HOME MORTGAGE, listing SIERRA PACIFIC MORTGAGE CO INC as the Grantor and HSBC BANK USA NA, as the Trustee, Document 4813726, Exhibit 3.

That as an actual and proximate cause of said conduct, the Plaintiff suffered actual damages in the sum of \$770,000, the fair market value of the property; harm to her credit; severe emotional distress; severe physical distress; anger and upset, all in an amount according to proof, but in the event of default, treble the actual damages, in the sum of \$2,310,000 plus \$770,000 or a total of \$3,080,000. Declaration of Linda Ames Paragraph 42.

THERE ARE TWO PROCEDURAL ERRORS MADE BY THE LOWER COURT WHICH DEPRIVED THE APPELLANT OF HER RIGHT OF RECOVERY.

First, the court incorrectly found that the statute of limitations expired preventing Plaintiff from recovery against Wells. This court granted a summary judgment in favor of the Defendant on the grounds that the complaint was barred by the Statute of Limitations. However, a review of the public records shows that HSBC BANK USA terminated their status in this state and became inactive in 08/10/2004. <https://ccfs.sos.wa.gov/#/BusinessSearch/BusinessInformation>.

When HSBC was registered here, they registered as a Foreign Entity whose jurisdiction was New York. Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates Series 2006-AR16 is not a registered trust in this state at all. See <https://ccfs.sos.wa.gov/#/BusinessSearch> - No Value Found.) As a result of their absence, Defendants / Appellees claims of statute of limitations are improper as the statute was tolled.

Second, the court found that the time for bringing the motion to vacate the judgment lapsed after a year. However, the appeal to the Supreme Court of the United States tolled the time, and the original

motion was brought in a timely fashion, and the court rejected even hearing the matter until the appeal was complete. The motion was filed within 30 days of the denial of the US Supreme Court review. The relief is sought under Civil Rule 60(b)(3) and there was no way of knowing the depth of Wells Fargos' deceit until the claims against it were published, and they were not published until the appeal was already pending. Some cases are brought as late as 2021 against Wells and they continue to grow. Appellant should be entitled to proceed.

Neither of these grounds sufficed to deprive the Appellant of her rights to recover.

CONCLUSION AND RELIEF SOUGHT

Ames has shown her determination to obtain justice. She took her first appeal to the US Supreme Court and was prevented from recovering because the original Wells Fargo participation was not before the court. Now, the entire matter is before this Court. After being unsuccessful on appeal, the court again denied her right to relief from the judgment on the basis that the court construed the evidence in the light most favorable to the moving party in the summary judgment and new evidence has come to light as to how nefarious Wells was in their deceit against Ames and theft of her home. That as

an actual and proximate cause of said conduct, the Plaintiff suffered actual damages in the sum of \$770,000, the fair market value of the property; harm to her credit; severe emotional distress; severe physical distress; anger and upset, all in an amount according to proof, but in the event of default, treble the actual damages, in the sum of \$2,310,000 plus \$770,000 or a total of \$3,080,000 and such other and further relief as the court deems just and adequate.

Respectfully Submitted 7/13/2021



**LINDA AMES
APPELLANT
11920 NW 35TH AVENUE
VANCOUVER WA 98685
TEL: (360) 931-1797
E-mail: lindalouames@comcast.net
Appellant Pro Se**

CERTIFICATE OF PAGE LENGTH

LINDA AMES, APPELLANT, hereby certifies that the attached brief does not exceed 50 pages, excluding the cover and index.

Dated: ~~June 29th~~, 2021

LA ^{July 13th}

Linda Ames

**LINDA AMES
APPELLANT
11920 NW 35TH AVENUE
VANCOUVER WA 98685
TEL: (360) 931-1797
E-mail: lindalouames@comcast.net
Appellant Pro Se**

CERTIFICATE OF SERVICE

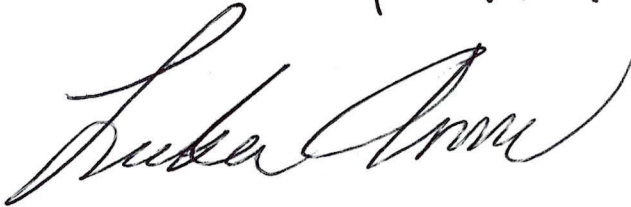
A true and correct copy of the Appellant's Opening Brief was served by means of US Mail on ~~June 29th~~, 2021, postage prepaid first class, on:

July 13th LA.

Description: Wright Finlay & Zak
3600 15th Ave. West
Suite 200
Seattle, WA 98119
Direct (206) 946-8109

Dated: ~~June 29th~~, 2021

July 13th LA.



**LINDA AMES
APPELLANT
11920 NW 35TH AVENUE
VANCOUVER WA 98685
TEL: (360) 931-1797
E-mail: lindalouames@comcast.net
Appellant Pro Se**

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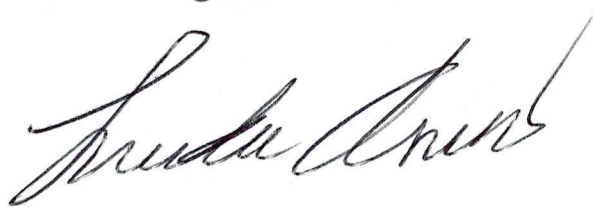
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Scott G. Weber, Clerk Clark Co.

A true and correct copy of the Appellant's Opening Brief was served by means of US Mail on June ~~30~~th, 2021, postage prepaid first class, on:

Description: Wright Finlay & Zak
3600 15th Ave. West
Suite 200
Seattle, WA 98119
Direct (206) 946-8109

Dated: June ~~30~~th, 2021



**LINDA AMES
APPELLANT
11920 NW 35TH AVENUE
VANCOUVER WA 98685
TEL: (360) 931-1797
E-mail: lindalouames@comcast.net
Appellant Pro Se**

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ORIGINAL FILED**

JUN 30 2021

Scott G. Weber, Clerk. Clark Co.

**COURT OF APPEALS CAUSE No. 55753-3-II
CLARK COUNTY CAUSE NO. 15-2-03226-1**

**IN THE COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON**

LINDA AMES, AN INDIVIDUAL

APPELLANT

v.

**HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE
FOR WELLS FARGO ASSET SECURITIES CORPORATION,
MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2006-AR16**

RESPONDENT

OPENING BRIEF OF APPELLANT

**LINDA AMES
APPELLANT
11920 NW 35TH AVENUE
VANCOUVER WA 98685
TEL: (360) 931-1797
E-mail: lindalouames@comcast.net
Appellant Pro Se**

*Here
is proof I
mailed them
a copy when
I filed with
the court. They
used them
+ sent it back
to me*